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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

DWIGHT BRUNOEHLER,

Plaintiff and Appellant,

v.

AMSTEM CORPORATION,

Defendant and Respondent.

B264870

(Los Angeles County Super. Ct.
No. BC461996)

APPEAL from a judgment of the Superior Court of Los Angeles, Barbara A. Meiers, Judge. Reversed and remanded.

Law Offices of Lisa L. Maki, Lisa L. Maki, Alex DiBona for Plaintiff and Appellant.

No appearance for Defendant and Respondent.

Plaintiff and appellant Dwight Brunoehler filed suit against defendants and respondents Amstem Corporation¹; Histostem Corporation, Limited; and Dr. Han Hoon, seeking damages in connection with plaintiff's employment with Amstem and subsequent termination. This is the second appeal plaintiff has taken from a default judgment in his favor against Amstem. On plaintiff's appeal from the first default judgment, we reversed and remanded for the court to calculate reasonable attorney fees and rule on plaintiff's claims against Hoon and Histostem. (*Brunoehler v. Amstem Corp.* (Oct. 10, 2014, B252545) [nonpub. opn.] (*Brunoehler I*)). On remand, the trial court entered a new default judgment against Amstem in an amount significantly less than the first, and by minute order denied plaintiff's request for judgment against Hoon and Histostem. Plaintiff contends the trial court lacked authority to reduce the damage award, and that he was entitled to judgment against Hoon and Histostem.² We hold the trial court had no authority to reduce the judgment against Amstem, and remand with directions to reinstate the original award of compensatory damages and award reasonable attorney fees consistent with our prior opinion. We further conclude that because no judgment was entered as to Hoon and Histostem, no appeal was taken from the minute order relating to their liability, and therefore we lack jurisdiction to address plaintiff's additional contentions.

¹ Defendants have not filed a respondent's brief.

² Plaintiff's opening brief also seeks appellate review of questions relating to jurisdiction, venue, and joint employer or alter ego liability, apparently in relation to the liability of Hoon and Histogram. We do not address these issues as they are not properly before this court on appeal.

FACTUAL AND PROCEDURAL HISTORY

Complaint

The gravamen of plaintiff's complaint is that defendant Hoon induced plaintiff to enter into an employment contract with Amstem, based on false representations about ownership interests between Hoon, an individual residing in Seoul, Korea,³ Amstem, a publicly traded company incorporated in Nevada, and Histostem, a Korean corporation. Plaintiff began working with Amstem in May 2010, developing a business plan and assisting with financing. He entered into an employment agreement in September 2010, but quickly began discovering irregularities in financial reporting. Amstem stopped compensating plaintiff in November 2010, stopped communicating with him in March 2011, and informed him by mail that he was terminated "for cause" in April 2011. The complaint alleged the following causes of action against all defendants, including Doe defendants: fraudulent inducement, negligent misrepresentation, breach of written contract, failure to pay wages due, Labor Code violations, wrongful termination in violation of public policy, and defamation. The prayer for relief sought judgment against defendants for, among other things: compensatory damages and interest in excess of \$500,000; damages for breach of written contract over \$151,000; special damages according to proof; prejudgment and postjudgment interest; punitive damages; and attorney fees.

First Default Judgment

The court entered default against Amstem on August 4, 2011, and against Histostem and Hoon on March 7, 2012. After multiple attempts, plaintiff initially

³ Hoon was the founder and CEO of Histostem and the Chairman of the Board of Directors of Amstem.

obtained a default judgment for \$537,657.49 against Amstem only but then appealed from the default judgment.

Plaintiff challenged the trial court's decision to deny attorney fees and the dismissal of defendants Hoon and Histostem. In *Brunoehler I*, we concluded plaintiff was entitled to statutory attorney fees. We also noted that the judgment dismissed all Doe defendants, but did not dismiss Hoon and Histostem. We reversed and remanded the case for the court to calculate reasonable attorney fees for the judgment against Amstem and rule as to Histostem and Hoon.

Second Default Judgment

On March 25, 2015, the trial court entered a minute order entitled "Ruling and Judgment re: Default Judgment Request." The court stated, "Since the one judgment rule stands for the proposition that there will be but one judgment in a case, the effect of this remand, as a matter of law, was to reopen the entire judgment." It went on to re-examine questions of jurisdiction and venue, taking into account defendants' limited contact with Los Angeles. It also questioned whether the original damage award to plaintiff was warranted and reduced the award to the \$151,000 plaintiff included in his prayer for relief on the breach of contract cause of action. Conceding that plaintiff was entitled to contractual attorney fees, the court granted \$24,432.75 in attorney fees, and directed plaintiff to submit a written default judgment within 10 days.

On April 15, 2015, the court entered a total default judgment of \$247,633.16. The judgment was entered in favor of plaintiff against Amstem only. Once again, the judgment made no reference to defendants Hoon or Histostem. Plaintiff filed a notice of appeal on June 12, 2015, appealing from the April 15, 2015 default judgment.

DISCUSSION

Reduction in Amount of Compensatory Damages

Plaintiff contends the trial court exceeded its jurisdiction when it revised the amount of compensatory damages and prejudgment interest after we remanded the case for calculation of attorneys' fees. We agree.

“The order of the reviewing court is contained in its remittitur, which defines the scope of the jurisdiction of the court to which the matter is returned.” (*Griset v. Fair Political Practices Com.* (2001) 25 Cal.4th 688, 701; see also *Snukal v. Flightways Manufacturing, Inc.* (2000) 23 Cal.4th 754, 774, fn. 5, [“the terms of the remittitur define the trial court’s jurisdiction to act”].) “The issues the trial court may address in the remand proceedings are therefore limited to those specified in the reviewing court’s directions, and if the reviewing court does not direct the trial court to take a particular action or make a particular determination, the trial court is not authorized to do so.” (*Ayyad v. Sprint Spectrum, L.P.* (2012) 210 Cal.App.4th 851, 859-60.)

This court’s earlier opinion reversed the judgment solely “with respect to the lower court’s denial of an award of attorney fees.” (*Brunoehler I.*) On remand, we directed the trial court to rule as to the named defendants Hoon and Histostem, and to calculate reasonable attorney fees for the judgment against Amstem. Beyond those two directions, the trial court lacked authority to reexamine any issues previously determined. Specifically, it lacked jurisdiction to recalculate the compensatory damages owed by Amstem.

Histostem and Hoon

While not entirely clear from the opening brief, plaintiff appears to be arguing the court erred when it concluded plaintiff had not established a prima facie case that defendants Hoon and Histostem were liable for damages under either a joint employer or

alter ego theory of liability. In its March 25, 2015 minute order, the trial court ruled that plaintiff was to “recover nothing from any individually named defendant having failed to submit facts sufficient to establish any alter ego relationships.” Plaintiff has only appealed from the April 15, 2015 default judgment against Amstem,⁴ and so the question of the court’s ruling as to “any individually named defendant,” presumably Histostem and Hoon, is not properly before us. No appealable judgment exists between plaintiff on the one hand and defendants Hoon and Histostem on the other hand, because the default judgment submitted by plaintiff and signed by the court on April 15, 2015, makes no mention of those defendants. It is conceivable that the court’s March 25, 2015 order might be treated as an appealable judgment. (See, e.g., *Shoemaker v. Harris* (2013) 214 Cal.App.4th 1210, 1222-1223 [when only the formality of entering a dismissal remains, an appellate court may deem an order sustaining a demurrer to be an appealable order of dismissal].) But plaintiff’s notice of appeal does not mention the March 25, 2015 order, and any appeal at this point would be untimely.

Jurisdiction

One section of plaintiff’s brief is entitled “The Trial Court’s Determination of Jurisdiction Was In Error.” Although the purpose of the discussion is unclear, the subsections go on to discuss venue, choice of law, and Florida law. Whatever the intended purpose of this section of the brief might be, we need not address the issues identified because we (1) have reinstated the original judgment, and (2) have concluded

⁴ To preclude any question about the appealability of the default judgment against Amstem, “An exception to the one final judgment rule applies to cases which involve multiple parties and a judgment is entered which leaves no issue to be determined between a plaintiff and a defendant. [Citation.]” (*Homestead Savings v. Darmiento* (1991) 230 Cal.App.3d 424, 430, fn. 5 [entertaining plaintiff’s appeal after summary judgment was granted against only one of two defendants].) Because the default judgment against Amstem leaves no issue to be determined between plaintiff and Amstem, it is appealable as a final judgment.

that no judgment was entered against the individual defendants and no appeal was taken from the order denying plaintiff relief from these individual defendants. No further discussion is warranted.

Transfer to New Judge

Plaintiff asks this court to exercise its discretion to order the matter reassigned to a different judge under Code of Civil Procedure section 170.1. “The power of the appellate court to disqualify a judge under Code of Civil Procedure section 170.1, subdivision (c), should be exercised sparingly, and only if the interests of justice require it. [Citation.] The interests of justice require it, for example, where a reasonable person might doubt whether the trial judge was impartial [citation], or where the court’s rulings suggest the ‘whimsical disregard’ of a statutory scheme. [Citation.]” (*Hernandez v. Superior Court* (2003) 112 Cal.App.4th 285, 303.)

Other than pointing out the judicial resources expended on appeal, plaintiff offers no compelling argument for why the judge’s disqualification is warranted in this case. While the trial court’s foray into questions outside of the scope of our directions on remand are concerning, and we are particularly puzzled by the court’s application of the “one judgment rule,”⁵ the court’s errors suggest neither a lack of impartiality nor a “whimsical disregard” of a statutory scheme. We therefore decline to exercise our prerogative to disqualify the judge under Code of Civil Procedure section 170.1, subdivision (c).

⁵ The “one final judgment rule” provides that a judgment must be final to be appealable, and that appeals from interlocutory or nonfinal judgments are generally prohibited. (See, e.g., *Otay River Constructors v. San Diego Expressway* (2008) 158 Cal.App.4th 796, 803.)

DISPOSITION

We reverse the April 15, 2015 default judgment against Amstem, and direct the court to enter a new default judgment consistent with the directions stated in *Brunoehler I*. Specifically, we direct the trial court to enter a default judgment of \$425,498.00 in damages, plus prejudgment interest, \$24,432.75 as reasonable attorney fees, and \$13,071.91 in costs. Appellant Dwight Brunoehler is awarded costs on appeal.

KRIEGLER, J.

We concur:

TURNER, P. J.

RAPHAEL, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.